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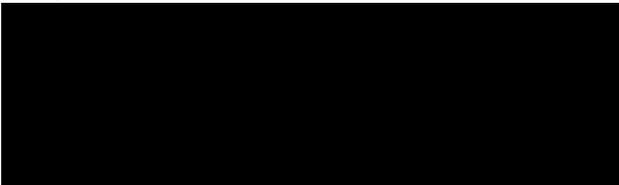
FILE: WAC 04 138 52052 Office: CALIFORNIA SERVICE CENTER Date: *JAN 30 2006*

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Michael T. Kelly
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a translation service that seeks to employ the beneficiary as a technical writer and translator and to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the petitioner did not submit sufficient evidence to establish that the proposed position is a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and accompanying brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a technical writer and translator.¹ In the cover letter attached to the initial petition, counsel states that the beneficiary would be "in charge of reviewing journals, books and publications in order to prepare informative reports regarding the latest development of the global market, new methods of universal track and enhanced systems of related services." The petitioner's employer support letter states that the beneficiary would be "in charge of correspondence, promotional literature, and public relation." In response to the director's request for more information, counsel states that the beneficiary "will translate written documents and spoken words from one language to another" with emphasis on legal documents used during litigation or international trade. The petitioner required that the beneficiary be well-versed in legal vocabulary and possess a bachelor's degree in law with 2-4 years experience in the field or a related area.

The director asked the petitioner to submit a more detailed job description with a list of job duties and percentage of time to be spent on each duty; past and present announcements for the proposed position to show that the petitioner requires at least a bachelor's degree in a specialty for the position; evidence that businesses of similar size and scope require the proposed position; a history of past employment practices for the proposed position to show that the petitioner normally requires at least a bachelor's in a specialty for the proposed position; evidence that the duties of the position could not be performed by someone with less than a bachelor's degree in a specialty; the petitioner's Form DE-6, Quarterly Wage Reports for its employees; the petitioner's organizational chart to show the petitioner's hierarchy and staffing levels with a list of employees by name and title; business licenses; federal income taxes; a more detailed description of the petitioner's business organization; photographs of the petitioner's business premises; a lease agreement; a floor plan; and a list of all the petitioner's employees with names, job titles, and immigration status.

In response, counsel submitted a letter listing the director's requested documents, with explanations regarding any of the documents not submitted; a position announcement for a technical writer and translator requiring a "bachelor's degree in area of specialty"; a generic corporate organizational chart; a receipt for an application for a business license; a letter from a certified public accountant stating that the petitioner hired him to file corporate income tax returns for 2002 and 2003; photographs of three desks; and a lease.

The director concluded that the petitioner failed to provide sufficient evidence to determine what the duties of the proposed position were and to establish that a person could not perform those duties with less than a bachelor's degree.

On appeal, counsel asserts that the evidence the director requested and the petitioner failed to provide was irrelevant to the proceedings, that the beneficiary is a member of the professions, and that the proposed position requires a member of the professions due to the complexity of the duties.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of highly specialized knowledge and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation.

¹ Counsel and petitioner are inconsistent and vague, throughout these proceedings, regarding the duties of the proposed position.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. Based on a thorough review of the duties of the proposed position alongside the *Handbook's* description of technical writers and translators, the AAO concludes that the proposed position is a dual position - technical writer and translator.

The AAO first turns to the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A)(I) - a bachelor's or higher degree or its equivalent, in a specific field of study, is normally the minimum requirement for entry into the particular position. To determine whether or not this criterion has been established, the AAO turns to the *Handbook's* discussion of the educational requirements for technical writers and translators. The *Handbook* indicates that jobs in these fields do not require a specific bachelor's degree for entry into these fields. Employers consider those with liberal arts degrees and relevant work experience suitable for jobs in this area. Employers prefer, but do not require, technical writers and translators to possess bachelor's degrees in specific fields of study. As no specific course of study is required for these occupations, the petitioner fails to establish that a bachelor's or higher degree, in a specific field of study, is the normal minimum requirement for entry into the proposed technical writer/translator position under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - that a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies, individuals, or a professional association in the industry attest that such companies "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). The petitioner has not submitted evidence that a bachelor's degree in a specialized field is common to the industry in parallel technical writer/translator positions among similar-sized translation services. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study, for the position. To determine whether a petitioner has established this criterion, the AAO generally reviews the petitioner's past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has submitted no evidence to establish its normal hiring practices for the proposed position. In the absence of an employment history for the proposed position, the petitioner failed to establish that the position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position - the second alternative prong of the second criterion and the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel asserts that "the mere fact this [p]etitioner is dealing with translation services and is engaged in rendering and translating highly sensitive documents and data from or to another language, make the higher degree in a legal field a prerequisite for the underlying position." Counsel further asserts that the proposed position is "extremely complex" and "unique" because it requires a background in law and technical terminology. The duties of the proposed position are routine to any translator position specializing in the translation of legal documents. The *Handbook* indicates that while translators "may not completely specialize in a particular field or industry, many do focus on one area of expertise." For example, judiciary translators must be "thoroughly familiar with the language and functions of the U.S. judicial system, as well as other countries' legal systems." While those who translate in a legal setting must be familiar with the legal

system, nothing in the *Handbook* indicates that one needs a bachelor's degree in law in order to translate legal documents from one language to another. Counsel has not submitted any documentary evidence to establish that translation of legal documents brings a particular complexity or uniqueness to the position requiring a bachelor's degree in law. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner has not established that the proposed position is a specialty occupation based upon the complexity or uniqueness of its duties.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.